

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

JANE DOE 1, JANE DOE 2, JANE DOE 3, §  
JANE DOE 4, JANE DOE 5, JANE DOE 6, §  
JANE DOE 7, JANE DOE 8, JANE DOE 9, §  
and JANE DOE 10 §  
§  
v. §  
§  
§  
Baylor University §

CAUSE NO. 4:18-mc-2603

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UNITED STATE DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

JANE DOE 1, JANE DOE 2, JANE DOE 3, §  
JANE DOE 4, JANE DOE 5, JANE DOE 6, §  
JANE DOE 7, JANE DOE 8, JANE DOE 9, §  
and JANE DOE 10 §  
§  
v. §  
§  
§  
Baylor University §

CAUSE NO. 6:16-cv-173-RP  
JURY TRIAL DEMANDED

**NON-PARTIES/RESPONDENTS BILL BAILEY AND THE CENIKOR FOUNDATION'S  
MOTION TO MODIFY SUBPOENA**

Pursuant to Federal Rule 45(d)(3)(A), Non-parties/Respondents Bill Bailey and The Cenikor Foundation file this Motion to Quash as to the subpoena issued to them in the above referenced case.

## **I. BACKGROUND**

On September 17, 2018, Bill Bailey as President of The Cenikor Foundation was served with a subpoena commanding the production of documents and information, including ESI, in the above numbered and referenced cause. *See Subpoena to Bill Bailey and The Cenikor Foundation, attached and incorporated hereto as Exhibit A.* The subpoena, issued by Chad Dunn on behalf of Plaintiffs commands Non-parties/Respondents Bill Bailey and The Cenikor Foundation to produce the documents and information, including ESI, listed in the subpoena on September 19, 2018 at 12:00 pm at the office of Dunn & Brazil, LLP, 4201 Cypress Creek Parkway, Suite 530, Houston, Texas 77068.

## **II. ARGUMENTS & AUTHORITIES**

Pursuant to Federal Rule of Civil Procedure 45, upon timely motion, the Court for the district where compliance is required must modify a subpoena which fails to allow reasonable time to comply, subjects a non-party to undue burden and requires the disclosure of privileged material. *See Fed. R. Civ. P. 45(d)(3)(A).* Non-parties/Respondents move to modify Plaintiffs' subpoena because the subpoena fails to allow a reasonable time to comply, is overly broad and not limited in time and scope thus subjecting them to undue burden and seeks the production of documents which are privileged.

Plaintiffs subpoena is overly broad and unduly burdensome wherein it seeks the production of documents and information, including ESI, relating to numerous investigations, communications, findings of fact and agreements without limitation as to time or scope. Such requests are overly broad and unduly burdensome wherein Non-parties/Respondents believe

that such information is equally available to Plaintiffs in a less burdensome manner through parties to the lawsuit who were involved in such matters.

Non-parties/Respondents are further entitled to modification of Plaintiffs' subpoena wherein there is a likelihood that potentially responsive documents contain information privileged by the Privacy Act of the Health Insurance Portability and Accountability Act ("HIPPA") and psychotherapist-patient privilege. *See* U.S.C. §290ee-3(a); 42 U.S.C. §290dd-3(a); *See also, Jaffee v. Redmond*, 518 U.S. 1, 15 (1996).

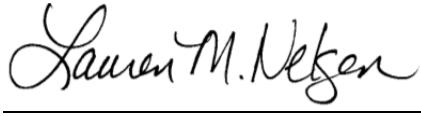
Additionally, Non-parties/Respondents are entitled to modification of Plaintiffs' subpoena wherein the subpoena fails to allow reasonable time to comply. As stated above, the subpoena was served on September 17, 2018 and required compliance by 12:00 pm on September 19, 2018. *See, Exhibit A.* The burden on Non-parties/Respondent to examine its extensive history of documentation and records to locate, review and comply with Plaintiffs subpoena is unduly burdensome, particularly when Non-parties/Respondents were allowed approximately two days in which to comply. As such, Non-parties/Respondents request Plaintiffs subpoena be modified to allow Non-parties/Respondents a reasonable amount of time to comply with Plaintiffs requests, **by 12:00 pm on October 8, 2018**, or reasonable time as determined by the Court.

### III. CONCLUSION

For these reasons, Non-parties/Respondents Bill Bailey and The Cenikor Foundation pray that this Court grant their Motion to Modify Subpoena and for all such further relief, both at law and in equity, to which they may be justly entitled.

Respectfully submitted,

KROGER BURRUS NELSON

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**CERTIFICATE OF SERVICE**

The foregoing document was served in compliance with the Federal Rules of Civil Procedure by the methods designated below, or if not designated, by United States Postal Service First Class Mail, on this, the 18<sup>th</sup> day of September, 2018

Chad W. Dunn	<input type="checkbox"/> via certified mail/return receipt requested
K. Scott Brazil	<input checked="" type="checkbox"/> via facsimile (512) 515-9355
<b>BRAZIL &amp; DUNN, LLP</b>	<input type="checkbox"/> via hand delivery
3303 Northland Drive, Suite 205	<input type="checkbox"/> via e-service
Austin, Texas 78731	<input checked="" type="checkbox"/> via email: <a href="mailto:chad@brazilanddunn.com">chad@brazilanddunn.com</a>
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